IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5402 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

M M DANAK

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5402 of 1992

MR HJ NANAVATI for Petitioner No. 1

MR PD BHATE AGP for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 01/07/2004

ORAL JUDGEMENT

1. By this petition under Article 227 of the Constitution, the judgment and order of the Gujarat Civil

Services Tribunal in Appeal No.174 of 1990, whereby the appeal of the petitioner is rejected, is called into question. That appeal was directed against the order dated 17.1.1990 of the respondent No.2 rejecting the representation of the petitioner for grant of deemed date of promotion.

2. The short facts of the petition are that, for the purpose of being eligible for promotion from Group-II to Group-I in the service of the respondent, it was necessary to pass Subordinate Accounts Service Examination, Parts-I and II. According to the petitioner, he appeared in Part-II examination in November, 1983 within the specified period and within the specified chances even as one officer junior to the petitioner, namely, Shri P.M.Chauhan, had passed the examination earlier and had also been promoted earlier. The petitioner pressed the claim for higher position in seniority on the basis of Rule 10 of the Gujarat Accounts and Treasuries Department (Subordinate Accounts Service Examination) Rules, 1975, which reads as under:

> "Rule 10. In case a person holding a post in Group-II who passes Part-II of the Examination within the specified period and within specified chances, shall, on his promotion to a post in Group-I, be assigned seniority over a person, if any, who although being junior to him in Group-II may have been promoted to a post in Group-I earlier by reason of his having passed the Part-II of the Examination earlier."

The petitioner's claim to deemed date of promotion so as to be put above Shri P.M.Chauhan in the seniority list was refuted by the aforesaid order dated 17.1.1990 from which the appeal before the Tribunal was preferred.

3. It was the case of the respondent before the Tribunal and before this Court that, at the relevant time, meeting of the Selection Committee for promotion to Group-I from Group-II was held on 31.3.1983 when the petitioner had not passed the S.A.S. examination and the case of Shri P.M.Chauhan, who had passed the examination in November, 1982, was considered and he was promoted. The petitioner appeared in the S.A.S. examination-Part -II in the month of November, 1983 and he was declared to be successful on 2.3.1984.

3.1 It was noticed that, thereafter, when the meetings of the Selection Committee for promotions were held on 21.3.1984, the name of the petitioner was

considered but he was not selected on account of adverse remarks in his annual confidential reports in the years 1979-80, 1980-81 and 1981-82. According to the Resolution No.SLT-1175-G dated 1.12.1975 of the General Administration Department, positive merits were required for promotion to Group-I cadre. Even thereafter, the case of the petitioner was considered for promotion but he was not found fit at the meeting held on 3.10.1986. Ultimately, the Promotion Committee found the petitioner fit for promotion in its meeting held on 25.11.1987 and he was promoted by order dated 25.4.1988.

4. Against the above backdrop of facts and contentions, the Tribunal took the view that the case of the petitioner was not a simple case falling within the Examination Rule 10 and the petitioner was rightly denied a deemed date to put him above his junior Mr.Chauhan.

5. The learned counsel Mr.Nanavati, appearing for the petitioner, fairly conceded that Rules were framed for the purpose of recruitment to several State services and posts under the control of the Finance Department. By General Circular No.85 published in the Handbook of General Circulars Vol.III, Parts I and II (Services and Provident Fund matters), qualifications of candidates for and the method of recruitment to State services and posts under the control of the Finance Department are prescribed. According to the applicable Rules, appointment to the Gujarat Accounts Service, Class-I (Junior Duty Posts) shall be made either by promotion of the officers of proved merit and efficiency who have worked for not less than three years in the Gujarat Accounts Service, Class-II or a corresponding post and have passed such departmental examination as (may) be prescribed by the Government or by nomination in the ratio of 2:1 respectively. Thus, admittedly, the criterion for promotion is proved merit and efficiency and passing of the departmental examination is a condition for being eligible to be considered for promotion.

5.1 As against that, Rule 10 of the Gujarat Accounts and Treasuries Department (Subordinate Accounts Service Examination) Rules, 1975 have, as its subject-matter, regulation of the conditions of service of persons appointed to the posts in Groups-I, II, III and IV in the Department of Accounts and Treasuries insofar as they relate to passing of the departmental examination. Thus, the relevant Rule 10 providing for seniority upon promotion after passing of the examination cannot override the decision of the appropriate authority not to

promote an officer in a particular year. Passing of the departmental examination only made the officer eligible for consideration. Besides that, the specific provision of Rule 10 can cover the cases where a junior officer was promoted earlier only on account of his having passed the Part-II examination earlier. In the facts of the present case, the officer junior to the petitioner was not promoted earlier and the petitioner was not promoted later only on account of his passing of the examination later. Instead, the petitioner was, even after his case being considered successively by the Committees for promotion, denied promotion on the grounds which cannot be the subject-matter of controversy at this stage. Therefore, in the facts of the present case, the petitioner cannot claim seniority over his erstwhile junior by taking recourse to Rule 10 which is part of the Examination Rules. Thus, no reason is made out to interfere with the impugned judgment and order of the Tribunal and the petition fails. It is accordingly rejected. Rule is discharged with no order as to costs.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)